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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

France

1. The Committee examined the third periodic report of France (CCPR/C/76/Add.7) at its 1597th, 1598th, 1599th and 1600th meetings on 20 and 21 July 1997 and subsequently adopted, at its 1613th meeting (sixtieth session), held on 31 July 1997, the following observations:

A. Introduction

2. The Committee expresses its appreciation to the State party for its elaborate and thorough report, which has been prepared in accordance with the Committee's guidelines, and for engaging in a constructive dialogue with the Committee through a highly qualified delegation. The Committee regrets, however, that the third periodic report, which was due in 1992, was submitted only after considerable delay and the Committee therefore did not have the opportunity to re-establish its dialogue with France for nearly 10 years. The Committee notes with satisfaction that the information provided in the report, and that orally submitted by the delegation in reply to both written and oral questions, enabled the Committee to obtain a good understanding of the actual compliance by France with the obligations undertaken under the International Covenant on Civil and Political Rights. The Committee appreciates the considerable written information provided by the Government after the discussion in answer to issues raised by members of the Committee.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee finds that reservations and declarations made by France when ratifying the Covenant and consequent non-reporting on many issues related to such reservations and declarations, which may bear directly or indirectly on the enjoyment of Covenant rights, make it difficult to assess fully and comprehensively the situation in regard to human rights in France.

C. Positive aspects

4. The Committee notes with satisfaction the institution and functioning of the Consultative Commission on Human Rights which includes participation by non-governmental organizations and serves as an independent consultative body.

5. The Committee welcomes the recent measures taken by France to promote equality of men and women in the context of article 3 of the Covenant. The Committee also notes the adoption of the Act of 22 November 1992 which aims to prevent and combat sexual harassment by an employer. The Committee appreciates the rapid rise in the proportion of women in public service posts.

6. The Committee welcomes the announcement made by the French delegation during the consideration of the report that the practice of deportation of groups of illegal immigrants by chartered flights to their home countries, bearing characteristics of collective expulsion, has stopped since 1 June 1997.

7. The Committee notes that article 55 of the Constitution of France provides for the direct applicability of the International Covenant on Civil and Political Rights and its primacy over domestic law. The Committee welcomes the extension of this principle to administrative jurisdictions by the decision of the Conseil d'Etat dated 20 October 1989.

8. The Committee notes with appreciation that a referendumn, in compliance with article 1 of the Covenant, is scheduled to be held in the overseas territory of New Caledonia in 1998 for the people of that territory to decide on their future political status.

9. The Committee takes note of the establishment of a Liaison Committee in the framework of the United Nations Decade for Human Rights Education.

D. Subjects of concern and the Committee's recommendations

10. The Committee is concerned that no specific mechanism exists in France to ensure that the views expressed by the Human Rights Committee on individual communications under the Optional Protocol are complied with. Therefore:

the Committee suggests that a mechanism be established for this purpose.

11. The Committee is concerned that in some overseas territories, such as Mayotte and New Caledonia, personal status is determined by religious or customary law, which might in some situations lead to discriminatory attitudes and decisions, especially against women. Therefore:

the Committee recommends that the State party undertake a comprehensive study to review the compatibility of the personal status of women in Mayotte, New Caledonia and other overseas territories with the provisions of the Covenant, particularly article 3, and, if needed, take appropriate measures to eliminate all existing inequalities.

12. The Committee is concerned at the prevailing malaise in the magistracy and the legal profession concerning the independence of the judiciary and of the prosecutors. In this regard, the Committee welcomes the information provided by the delegation to the effect that a commission has recently reported and made recommendations on this issue.

13. The Committee is obliged to observe that the Amnesty Acts of November 1988 and January 1990 for New Caledonia are incompatible with the obligation of France to investigate alleged violations of human rights.

14. While acknowledging the efforts undertaken and the successful results obtained by the State party during the period under review in combating discrimination against women, the Committee is concerned at the low proportion of women appointed as senior officials in the public administration at both local and central levels. Therefore:

> the Committee urges the State party to pursue active measures for the realization of women's rights, especially by taking measures to achieve the equal representation of women at all levels of the public administration and to prevent discrimination against workers with family responsibilities.

15. The Committee is concerned at existing procedures of investigating human rights abuses committed by the police. It is also concerned at the failure or reluctance of prosecutors to apply the law on investigating human rights violations where law enforcement officers are concerned, and at the delays and unreasonably lengthy proceedings in investigating and prosecuting alleged human rights violations involving law enforcement officers. Therefore:

> the Committee recommends that the State party take appropriate measures to fully guarantee that all investigations and prosecutions are undertaken in full compliance with the provisions of articles 2, paragraph 3, 9 and 14 of the Covenant.

16. The Committee is seriously concerned at the number and serious nature of the allegations it has received of ill-treatment by law enforcement officials of detainees and other persons who come into conflictual contact with them, including unnecessary use of firearms resulting in a number of deaths, the risk of such ill-treatment being much greater in the case of foreigners and immigrants. It is also concerned at the reported increase in the number of suicides in detention centres. The Committee is concerned that in most cases there is little, if any, investigation of complaints of such ill-treatment by the internal administration of the police and the gendarmerie nationale, resulting in virtual impunity. The Committee is concerned that no independent mechanism exists to receive individual complaints from detainees. Therefore:

> the Committee recommends that the State party take appropriate measures to remedy this state of affairs and, inter alia, reduce the level of use of solitary confinement. The Committee also recommends that the State party establish an independent mechanism to monitor detention centres and to receive and deal with individual complaints of ill-treatment by law enforcement officials. The Committee urges the State party to introduce in the training of law enforcement officials at all levels a

comprehensive course in human rights along the lines suggested in the United Nations training manual for law enforcement officers. (Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police)

17. The Committee is concerned about the frequent resort to and length of pre-trial detention. It is a matter of particular concern to the Committee that the length of pre-trial detention should be high in case of juveniles. This would constitute violation of article 9, paragraph 3, and 14, paragraphs 2 and 3 (c), of the Covenant. The Committee is also concerned that the right to legal counsel may not be available to a juvenile in certain proceedings. Therefore:

the Committee recommends that measures be taken to reduce the length of pre-trial detention and to ensure legal aid to juveniles in legal proceedings.

18. The Committee is concerned that the powers of the gendarmerie nationale, which is basically a military corps, when operating in a civilian public order situation are wider than those of the police. Therefore:

the Committee recommends that the State party consider repealing or modifying the decree dated 22 July 1943 so as to reduce the powers of the gendarmerie nationale with respect to the use of firearms in public order situations, with a view to harmonizing them with those of the police.

19. The Committee is concerned that in order to exercise the right to conscientious objection to military service, which is a part of freedom of conscience under article 18 of the Covenant, the application must be made in advance of the conscript's entry into military service and that the right cannot be exercised thereafter. Moreover, the Committee notes that the length of alternative service is twice as long as military service and that this may raise issues of compatibility with article 18 of the Covenant.

20. The Committee is concerned that the treatment given by the State party to asylum seekers does not appear to comply with the provisions of the Covenant. The Committee is furthermore concerned at the reported instances of asylum seekers not being allowed to disembark from ships at French ports, without being given an opportunity to assert their individual claims; such practices raise issues of compatibility with article 12, paragraph 2, of the Covenant. However, the Committee welcomes the fact that France is considering the abolition of such practices.

21. The Committee is particularly concerned by the restrictive definition of the concept of "persecution" of refugees used by the French authorities as it does not take into account possible persecution by non-State actors. Therefore:

the Committee recommends that the State party adopt a wider interpretation of "persecution" to include non-State actors.

22. The Committee is concerned that the Office of the United Nations High Commissioner for Refugees (UNHCR) has no right on its own of access to the various places where persons applying for asylum or waiting deportation are kept. Therefore:

the Committee recommends that UNHCR should be able to visit these places whenever it thinks fit without any obstruction or hindrance.

23. The Committee is concerned about the continued application of the anti-terrorist laws of 2 September 1986 and 16 December 1992 which provide for a centralized court with prosecutors having special powers of arrest, search and prolonged detention in police custody for up to four days (twice the normal length), and according to which an accused does not have the same rights in the determination of guilt as in the ordinary courts. The Committee is furthermore concerned that the accused has no right to contact a lawyer during the initial 72 hours of detention in police custody. The Committee is concerned that there is no appeal provided for against the decisions of the special court. The Committee regrets that the State party did not provide information about which authority in practice takes the decision whether a case is handled under the ordinary criminal law or under the anti-terrorist laws, and about the role played by the police in this decision. The Committee has now been given information as regards statistics on trials concluded under the anti-terrorist laws, but it is informed that many hundreds of people are being detained, investigated and tried for committing acts of terrorism or related offences. Therefore, in the circumstances:

the Committee would recommend that anti-terrorist laws, which appear to be necessary to combat terrorism, be brought fully into conformity with the requirements of articles 9 and 14 of the Covenant.

24. The Committee takes note of the declaration made by France concerning the prohibition, prescribed under article 27 of the Covenant, to deny ethnic, religious or linguistic minorities the right, in community with members of their group, to enjoy their own culture, to profess and practise their own religion or to use their own language. The Committee has taken note of the avowed commitment of France to respect and ensure that all individuals enjoy equal rights, regardless of their origin. The Committee is, however, unable to agree that France is a country in which there are no ethnic, religious or linguistic minorities. The Committee wishes to recall in this respect that the mere fact that equal rights are granted to all individuals and that all individuals are equal before the law does not preclude the existence in fact of minorities in a country, and their entitlement to the enjoyment of their culture, the practice of their religion or the use of their language in community with other members of their group.

25. The Committee is concerned that the Civil Code establishes a different minimum age for marriage for girls (15) and for boys (18) and that it sets such a low age for girls. It is also concerned that the Civil Code specifies that only the father can make declaration of birth of his child. Furthermore, the Committee is concerned that in some situations children born out of wedlock might not have their right to succession fully recognized. Therefore:

the Committee recommends that the minimum age of marriage for girls be raised. It also suggests that the State party amend its Civil Code to allow mothers to make the declaration of birth of her child. Furthermore, the Committee recommends that all children born out of wedlock be given the same succession rights as children born in wedlock.

26. The Committee is concerned at the absence of an independent complaint mechanism for the protection and enforcement of respect for human rights, such as a national human rights commission. Therefore:

the Committee strongly recommends that an institutional mechanism be established by the Government of France for receiving complaints of violations of human rights, including all forms of discrimination, with the power to determine whether such complaints are justified, to act as conciliator between the parties and to award compensation.

27. The Committee recommends that the State party submit its next report in time and that the report include a comprehensive assessment of the implementation of the provisions of the Covenant, including in particular articles 9 and 14, and details of the cultural, religious and linguistic rights of ethnic groups and inhabitants of the overseas territories. The Committee would welcome reconsideration by France of its reservations and declarations to the Covenant.

28. The Committee draws to the attention of the Government of France the provisions of paragraph 6 (a) of the guidelines regarding the form and contents of periodic reports by States parties, and requests accordingly that its next periodic report, due on 31 December 2000, contain material which responds to all the questions raised in the present concluding observations. The Committee further requests that these concluding observations be widely disseminated among the public at large in all parts of France.